THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2462 OF 1995

8th AUGUST, 2006

BETWEEN

Habibunnissa Begum and others.

… Petitioners

vs.

The Commissioner, Warangal Municipal Corporation, Warangal.

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.2462 OF 1995

ORDER:

The petitioners are members of same family. It appears the father of petitioners 2 to 4 was carrying on business of making cement pipes in plot Nos.63 by the side of grain market since 1960. Admittedly, the property belongs to Warangal Municipality, now Corporation. When there was a move by the then Municipality to evict the father of the petitioners 2 to 4, he filed suit being O.S.No.47 of 1976 on the file of the Court of the Principal District Munsif, Warangal, for permanent injunction and the same was dismissed. Fiaz Khan was also unsuccessful in A.S.No.18 of 1980 on the file of the District Judge, Warangal. Thereafter, he filed S.A.No.2138 of 1982 before this Court, which was also dismissed on 24.03.1967. This Court, however, observed that Fiaz Khan may approach the Warangal Municipality for alienation of the land on payment of market value. Therefore, the petitioners allegedly approached the Municipality by making representation expressing willingness to pay the market value. Considering the same, the Director of Municipal Administration sent

communication to Municipal Commissioner of Warangal to send the proposals through the District Collector, Warangal. In spite of the same, the Municipality did not send proposals to issue notice under Sections 405 and 406 of Hyderabad Municipal Corporations Act, 1955 (HMC Act, for brevity) read with A.P.Municipal Corporations Act, 1974 calling upon the first petitioners to remove the encroachment. Aggrieved by the same, the petitioners filed the present writ petition.

A counter affidavit is filed opposing the writ petition. It is stated that petitioners have no right to insist upon sale of the land by the Municipal Corporation and that after issuing the impugned notice, the petitioners were removed from the land and possession was taken by the respondent Corporation. Though the counter is served, no reply affidavit is filed denying the counter averments. Be that as it is, under Sections 405 and 406 of the HMC Act, duty is cast on the Commissioner of the Corporation to remove the encroachments. When the Commissioner issues a notice in discharge of such statutory duty, no Mandamus can be issued declaring such action as illegal. Further, as stated in the counter affidavit, petitioners are already removed from the encroachment and the cause of action does not survive.

The writ petition is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

08.08.2006
pln